

ENVIRONMENTAL PROTECTION AGENCY

[OAR-2003-0017; FRL-7359-9]

Protection of Stratospheric Ozone; Process for Exempting Critical Uses of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a "critical use" claim. Methyl bromide is a chemical pesticide that has been identified under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the Clean Air Act, as an ozone-depleting substance. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Today's solicitation is for the third round of applications for Critical Use Exemptions beyond the January 1, 2005 methyl bromide phaseout, specifically for 2006 and 2007 calendar years. Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before August 8, 2004. The response period is now 90 days reflecting the clarifications and reduction of burden in the application.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in triplicate (three copies):

1. *By mail:* U.S. Environmental Protection Agency, Office of Air and Radiation, Global Programs Division (6205J), Attention: Methyl Bromide Review Team, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or

2. *By courier delivery (other than U.S. Post Office overnight):* U.S. Environmental Protection Agency, Office of Air and Radiation, Global Programs Division, Attention: Methyl Bromide Review Team, 1310 L St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: *General information:* U.S. EPA Stratospheric Ozone Information Hotline, 1-800-296-1996.

Technical information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8136.

Economic information: Jin Kim, U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8134.

Regulatory information: Marta Montoro, U.S. Environmental Protection Agency, Office of Atmospheric Programs, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-343-9321.

SUPPLEMENTARY INFORMATION:

I. What Do I Need to Know to Respond to this Request for Applications?

A. Who Can Respond to this Request for Information?

The Application Form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2005 and believe there are no technically and economically feasible alternatives. EPA encourages users with similar circumstances of use to submit a single application (e.g., any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Unit I.B.).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical and/or economic feasibility research). The Application Form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses listed under **ADDRESSES**.

B. Who Can I Contact to Find Out If a Consortium is Submitting an Application Form for My Methyl Bromide Use?

Please contact your local, state, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your state agency has chosen to participate, EPA encourages all applicants to first submit their applications to the state regulatory agency, which will then forward

them to EPA. The National Pesticide Information Center website is one resource available for identifying the lead pesticide agency in your state (<http://ace.orst.edu/info/npic/state1.htm>).

C. How Do I Obtain an Application Form for the Methyl Bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format at EPA website: <http://www.epa.gov/ozone/mbr>.
2. Microsoft Excel and other electronic spreadsheet formats at EPA website: <http://www.epa.gov/ozone/mbr>.
3. Mailed hard-copy ordered through the Stratospheric Ozone Protection Hotline at 1-800-296-1996.
4. Hard-copy format at Air Docket No. OAR-2003-0017. The docket is located in room B-102, EPA West Building, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC 20460. The Docket Office is open from 8:30 a.m. until 4:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

D. What Alternatives Must Applicants Address When Applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is “critical,” applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an “International Index” of Methyl Bromide Alternatives which lists chemical and non-chemical alternatives, by crop (http://www.epa.gov/ozone/mbr/in_alt_in.html). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the “technical potential” to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (http://www.teap.org/html/teap_reports.html). A corresponding U.S. Index of alternatives (also listed by crop) has been developed by the U.S. government regarding chemical alternatives (http://www.epa.gov/ozone/mbr/us_alt_in.html). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the U.S.

Applicants must address technical, regulatory, and economic issues that limit the adoption of “chemical alternatives” and combinations of “chemical” and “non-chemical alternatives” listed for their crop within the “U.S. Index” of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of “non-chemical alternatives” and combinations of “chemical” and “non-chemical alternatives” listed for their crop in the “International Index.”

E. What Portions of the Applications will be Considered Confidential Business Information?

The person submitting information to EPA in response to this Notice may assert a business confidentiality claim covering part of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36902, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the “Worksheet Six: Application Summary” page of the application any information that you wish to claim as confidential business information (CBI). These application information summary sheets will be posted on the EPA website (<http://www.epa.gov/ozone/mbr>) and included in Air Docket No. OAR-2003-0017. Applications that are not CBI will be placed in the Docket in their entirety. Please note, providing CBI may delay the ability of EPA to review your application.

F. Must I Submit a “Notice of Intent to Apply”?

A “Notice of Intent to Apply” is not required, but would facilitate the organization of the application review during the Critical Use Exemption Process. If EPA is aware of the consortia and the individuals who intend to submit applications 30 days before the application deadline, the technical experts will be better positioned to review the application. This Notice may be submitted to Marta Montoro via e-mail at montoro.marta@epa.gov, or via mail at U.S. Environmental Protection

Agency, Office of Air and Radiation, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by courier at U.S. Environmental Protection Agency, Office of Air and Radiation, Global Programs Division, 1310 L St., NW., Washington, DC 20005; telephone number: 202-343-9321.

G. What if I Submit an Incomplete Application?

If EPA determines that an application is lacking sufficient information needed in order to be processed by the technical reviewers, applicants will be notified by telephone or in writing. If the required information is not submitted 30 days after the request, the application will not be processed. However, reviewers may also call applicants for further elaboration about their application, even if it is complete.

H. What if I Already Applied in 2002 and/or 2003?

In March 2004, the Parties decided that exemptions would be granted for 1 year. As a result, anyone wishing to obtain a CUE to use methyl bromide in 2007 must re-apply. The data required for updating applications will be noted in the 2004 CUE application. Additional guidance will be available at <http://www.EPA.gov/ozone/mbr>.

II. What is the Legal Authority for the Critical Use Exemption?

A. What is the Clean Air Act (CAA) Authority for Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law No. 105-277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

- 25% reduction (from 1991 baseline) in 1999
- 50% reduction in 2001
- 70% reduction in 2003
- 100% reduction in 2005

EPA published regulations in the **Federal Register** of June 1, 1999 (64 FR 29240) (FRL-6351-6), and November 28, 2000 (65 FR 70795) (FRL-6906-4), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005 “to the extent consistent with the Montreal Protocol” (section 764 of the 1999 Omnibus Consolidated and

Emergency Supplemental Appropriations Act (Public Law 105–277, October 21, 1998) (section 604(d)(6) of the Clean Air Act).

B. What is the Montreal Protocol Authority for Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be “critical uses.”

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a “critical use” determination:

(a) That a use of methyl bromide should qualify as ‘critical’ only if the nominating Party (e.g., U.S.) determines that:

- (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and
- (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

- (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;
- (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;
- (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. . . .

In the context of the phaseout program, the use of the term “consumption” may be misleading. Consumption does not mean the “use” of a controlled substance, but rather is defined as the formula: consumption = production + imports - exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical’s phaseout under EPA’s phaseout regulations, unless otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations

for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How Will the U.S. Implement the Critical Use Exemption?

A. When Will the Exemption Become Available to U.S. Users of Methyl Bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption will be available to approved uses on January 1, 2005. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment exemption) must conform to the phasedown schedule listed above (see Unit II.A.). For more information on the quarantine and preshipment exemption, please refer to 68 FR 238 (January 2, 2003) (FRL-7434-1).

B. What is the Projected Timeline for the Critical Use Exemption Application Process?

There is both a domestic and international component to the Critical Use Exemption process. The following table represents a projected timeline for the process; note that this year's application and nomination cycle overlaps with the beginning of the phaseout:

[Insert date of publication in the Federal Register]	Solicit applications for the methyl bromide Critical Use Exemption for 2006 and 2007
August 8, 2004	Deadline for submitting Critical Use Exemption applications to EPA
Late 2004	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package
January 31, 2005	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties
Early 2005	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC)
Mid 2005	Parties consider TEAP/MBTOC recommendations
Late 2005	Parties authorize Critical Use Exemptions for methyl bromide for production and consumption in 2007
Mid 2004	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S.
Late 2004	EPA publishes final rule allocating Critical Use Exemptions in the U.S.
January 1, 2005	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

List of Subjects

Environmental protection, Critical Use Exemption, Methyl
bromide, Pesticide.

Dated: _____

Director, Office of Atmospheric Programs.

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